

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 16, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

YADIRA G.,¹

Plaintiff,

v.

ANDREW M. SAUL, the Commissioner
of Social Security,

Defendant.

No. 4:20-CV-5093-EFS

**ORDER DENYING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions.²

Plaintiff Yadira G. appeals the denial of benefits by the Administrative Law Judge (ALJ). She alleges the ALJ erred by 1) improperly determining Plaintiff's severe impairments, 2) failing to consider all applicable listings, 3) ignoring a medical opinion, 4) discounting Plaintiff's symptom reports, 5) improperly assessing

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." *See* LCivR 5.2(c).

² ECF Nos. 13-15.

1 Plaintiff's residual functional capacity and therefore relying on an incomplete
2 hypothetical at step five, and 6) relying on incorrect job evidence at step-five. In
3 contrast, Defendant Commissioner of Social Security asks the Court to affirm the
4 ALJ's decision finding Plaintiff not disabled. After reviewing the record and
5 relevant authority, the Court denies Plaintiff's Motion for Summary Judgment,
6 ECF Nos. 13 & 14, and grants the Commissioner's Motion for Summary Judgment,
7 ECF No. 15.

8 I. Five-Step Disability Determination

9 A five-step sequential evaluation process is used to determine whether an
10 adult claimant is disabled.³ Step one assesses whether the claimant is currently
11 engaged in substantial gainful activity.⁴ If the claimant is engaged in substantial
12 gainful activity, benefits are denied.⁵

13 Step two assesses whether the claimant has a medically severe impairment,
14 or combination of impairments, which significantly limits the claimant's physical
15 or mental ability to do basic work activities.⁶ If the claimant does not, benefits are
16 denied.⁷

18 ³ 20 C.F.R. § 416.920(a).

19 ⁴ *Id.* § 416.920(a)(4)(i).

20 ⁵ *Id.* § 416.920(b).

21 ⁶ 20 C.F.R. § 416.920(a)(4)(ii).

22 ⁷ *Id.* § 416.920(c).

1 Step three compares the claimant's impairments to several recognized by the
2 Commissioner to be so severe as to preclude substantial gainful activity.⁸ If an
3 impairment meets or equals one of the listed impairments, the claimant is
4 conclusively presumed to be disabled.⁹

5 Step four assesses whether an impairment prevents the claimant from
6 performing work she performed in the past by determining the claimant's residual
7 functional capacity (RFC).¹⁰ If the claimant is able to perform prior work, benefits
8 are denied.¹¹

9 Step five, the final step, assesses whether the claimant can perform other
10 substantial gainful work—work that exists in significant numbers in the national
11 economy—considering the claimant's RFC, age, education, and work experience.¹²
12 If so, benefits are denied. If not, benefits are granted.¹³

17 ⁸ *Id.* § 416.920(a)(4)(iii).

18 ⁹ *Id.* § 416.920(d).

19 ¹⁰ *Id.* § 416.920(a)(4)(iv).

20 ¹¹ *Id.*

21 ¹² *Id.* § 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497-98 (9th Cir. 1984).

22 ¹³ 20 C.F.R. § 416.920(g).

1 The claimant has the initial burden of proof under steps one through four.¹⁴
 2 At step five, the burden shifts to the Commissioner.¹⁵

3 **II. Factual and Procedural Summary**

4 Plaintiff filed a Title XVI application, alleging an amended disability onset
 5 date of June 26, 2015.¹⁶ Her claim was denied initially and upon reconsideration.¹⁷
 6 A video administrative hearing was held before Administrative Law Judge Stewart
 7 Stallings.¹⁸

8 In denying Plaintiff's disability claim, the ALJ made the following findings:

- 9 • Step one: Plaintiff had not engaged in substantial gainful activity
 10 since June 26, 2015, the alleged onset date;
- 11 • Step two: Plaintiff had the following medically determinable severe
 12 impairments: pulmonary embolism, asthma, overactive bladder with
 13 pelvic pain, lumbar degenerative disk disease, cervical degenerative
 14 disk disease, interstitial cystitis, depression, and anxiety;

18 ¹⁴ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

19 ¹⁵ *Id.*

20 ¹⁶ AR 209-14.

21 ¹⁷ AR 125-33 & 139-49. Plaintiff's prior disability claim was also denied. AR 71-89.

22 ¹⁸ AR 32-70.

- 1 • Step three: Plaintiff did not have an impairment or combination of
- 2 impairments that met or medically equaled the severity of one of the
- 3 listed impairments;
- 4 • RFC: Plaintiff had the RFC to perform sedentary work except:
- 5 she needs to be able to shift positions from sitting, standing,
- 6 or walking every 30 minutes for up to 5 minutes, while
- 7 remaining at her work station. She can occasionally climb
- 8 stairs and ramps, stoop, kneel, crouch, or crawl, and never
- 9 climb ropes, ladders, or scaffolds. She can frequently handle
- 10 and finger bilaterally. She should avoid all exposure to
- 11 extreme cold or heat, wetness, fumes, odors, dusts, gases,
- 12 poor ventilation in industrial settings, and hazards, like use
- 13 of dangerous or moving machinery and exposure to
- 14 unprotected heights. She can have brief, superficial
- 15 interaction with the public, and occasional interaction with
- 16 coworkers and supervisors.
- 17 • Step four: Plaintiff had no past relevant work; and
- 18 • Step five: considering Plaintiff's RFC, age, education, and work
- 19 history, Plaintiff could perform work that existed in significant
- 20 numbers in the national economy, such as addresser, document
- 21 preparer, and final assembler.¹⁹

22 When assessing the medical-opinion evidence, the ALJ gave little weight to

23 the nonexamining opinions of John Gilbert, Ph.D., Lisa Hacker, M.D., and

Guillermo Rubio, M.D, because the ALJ found Plaintiff was more limited than

¹⁹ AR 12-31.

1 those physicians opined.²⁰ The ALJ also found that Plaintiff's medically
 2 determinable impairments could reasonably be expected to cause some of the
 3 alleged symptoms, but that her statements concerning the intensity, persistence,
 4 and limiting effects of those symptoms were not entirely consistent with the
 5 medical evidence and other evidence in the record.²¹

6 Plaintiff requested review of the ALJ's decision by the Appeals Council,
 7 which denied review.²² Plaintiff timely appealed to this Court.

8 **III. Standard of Review**

9 A district court's review of the Commissioner's final decision is limited.²³ The
 10 Commissioner's decision is set aside "only if it is not supported by substantial
 11 evidence or is based on legal error."²⁴ Substantial evidence is "more than a mere
 12 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
 13 mind might accept as adequate to support a conclusion."²⁵ Moreover, because it is
 14 the role of the ALJ and not the Court to weigh conflicting evidence, the Court
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 17 ²⁰ AR 23.

18 ²¹ AR 21-23.

19 ²² AR 1-6.

20 ²³ 42 U.S.C. § 405(g).

21 ²⁴ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

22 ²⁵ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).
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upholds the ALJ's findings "if they are supported by inferences reasonably drawn from the record."²⁶ The Court considers the entire record as a whole.²⁷

Further, the Court may not reverse an ALJ decision due to a harmless error.²⁸ An error is harmless "where it is inconsequential to the [ALJ's] ultimate nondisability determination."²⁹ The party appealing the ALJ's decision generally bears the burden of establishing harm.³⁰

IV. Analysis

A. Step Two: Plaintiff fails to establish consequential error.

Plaintiff contends the ALJ erred at step two by failing to identify her seronegative rheumatoid arthritis (RA), cardiac impairments, and cervicogenic headaches as severe impairments.

²⁶ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

²⁷ *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire record as whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

²⁸ *Molina*, 674 F.3d at 1111.

²⁹ *Id.* at 1115 (quotation and citation omitted).

³⁰ *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

1 At step two, the ALJ must determine whether the claimant suffers from a
2 “severe” impairment, i.e., one that significantly limits her physical or mental
3 ability to do basic work activities.³¹ A medically determinable impairment is not
4 severe if the “medical evidence establishes only a slight abnormality or a
5 combination of slight abnormalities which would have no more than a minimal
6 effect on an individual’s ability to work.”³² Step two is “a de minimus screening
7 device [used] to dispose of groundless claims.”³³ And “[g]reat care should be
8 exercised in applying the not severe impairment concept.”³⁴

9 Here, the ALJ found Plaintiff had several severe impairments: pulmonary
10 embolism, asthma, overactive bladder with pelvic pain, lumbar degenerative disk
11 disease, cervical degenerative disk disease, interstitial cystitis, depression, and
12 anxiety.³⁵ Yet, the ALJ also found that there was no clear diagnosis of seronegative
13 RA and thus, the ALJ found that seronegative RA was not a medically
14 determinable impairment.

18 ³¹ 20 C.F.R. § 416.920(c).

19 ³² SSR 85-28 at *3.

20 ³³ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

21 ³⁴ SSR 85-28.

22 ³⁵ AR 19.

1 1. Seronegative RA

2 The ALJ found, “[s]eronegative rheumatoid arthritis was alleged by the
3 claimant, but there was no clear diagnosis and all her tests were negative. [AR
4 1251-53]. In January and November 2018, her ANA was negative. [AR 1804]. Thus,
5 this was not shown to be a medically determinable impairment.”³⁶ Plaintiff argues
6 that Dr. Kwanghoon Han formally diagnosed seronegative RA accompanied by
7 Raynaud’s phenomenon in November 2018 and thus the ALJ erred in failing to
8 assess seronegative RA as a medically determinable impairment, especially
9 because the RFC only limited Plaintiff to frequent handling and fingering, rather
10 than occasional handling and fingering. The Commissioner argues that it was
11 unclear whether Dr. Han diagnosed seronegative RA and regardless any step-two
12 error was harmless.

13 The ALJ’s finding was erroneous. In February 2018, Dr. Han stated he was
14 considering whether Plaintiff’s observed tenderness in her right knee, both ankles,
15 and right metacarpophalangeal joint 1 (MCP 1) was “related to inflammatory
16 arthritis such as seronegative rheumatoid arthritis or Sjogren’s syndrome,” and so
17 ordered more lab tests and x-rays.³⁷ Dr. Han “assessed,” or diagnosed, Plaintiff
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21 ³⁶ *Id.*

22 ³⁷ AR 1275-80.
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1 with polyarticular arthritis.³⁸ Then in November 2018, Plaintiff returned to Dr.
2 Han.³⁹ Dr. Han observed tenderness in the left knee, the right MCP 1-5 and
3 proximal interphalangeal (PIP) 2 and 3, and left MCP 2 and 3 and PIP 2 and 3, and
4 swelling in the left MCP 2 and 3.⁴⁰ Dr. Han diagnosed Plaintiff with seronegative
5 rheumatoid arthritis, i.e., “rheumatoid arthritis of multiple sites with negative
6 rheumatoid factor.”⁴¹ Accordingly, the ALJ erred at step two.

7 But the ALJ’s error was harmless.⁴² A mere diagnosis does not equate to a
8 particular functional limitation.⁴³ Even though there was no medical opinion
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10 ³⁸ The Commissioner also argues that Dr. Han was referring to only a suspected
11 history of seronegative RA. This argument is unsupported as Dr. Han used “H/O”
12 (history of) when referring to conditions that he was not diagnosing but for which
13 Plaintiff had a history of, such as pulmonary embolism. AR 1279.

14 ³⁹ AR 1250-55.

15 ⁴⁰ AR 1253.

16 ⁴¹ AR 1250 & 1255.

17 ⁴² See *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008) (finding the
18 RFC captured the medically supported restrictions)]; *Stout v. Comm’r of Soc. Sec.*
19 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

20 ⁴³ See *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1164-65 (9th Cir.
21 2008) (finding no step-two error because the medical record did not establish work-
22 related limitations); *Key v. Heckler*, 754 F.2d 1545, 1549 (9th Cir. 1985).

1 limiting Plaintiff's handling and fingering, the RFC restricted Plaintiff to frequent
2 bilateral handling and fingering. Plaintiff argues the RFC should have instead
3 limited her to occasional bilateral handling and fingering because she testified that
4 she drops items and has difficulty gripping items and using a computer or phone.
5 However, the ALJ discounted her symptom reports because, inter alia, a treatment
6 provider in January 2018 found that Plaintiff could engage in light or sedentary
7 work, Plaintiff improperly sought emergency cause for nonemergent conditions,
8 and because her reported symptoms were inconsistent with the objective medical
9 evidence.⁴⁴ The ALJ noted that examination results indicated that Plaintiff had full
10 strength, movement, and grossly intact sensation in her upper extremities.⁴⁵
11 Accordingly, any error in failing to identify seronegative RA as a severe
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14 ⁴⁴ AR 23 (citing AR 343 (noting that Plaintiff stated she ran a nonprofit, no
15 complaint about difficulty with her hands, and no observed swelling or tenderness
16 in hands), AR 717 (reporting that Plaintiff sews and crochets items for sale,
17 including headbands, barrettes, and scarves, and sets up and takes down event
18 display booths), AR 1313 (noting that Plaintiff works for a nonprofit), and AR 1326
19 (discussing that Plaintiff planned a community event)) & AR 22 (citing AR 1378
20 ("Restricted in physically strenuous activity but ambulatory and able to carry out
21 work of a light or sedentary nature, e.g., light house work, office work.")).

22 ⁴⁵ AR 21 (citing, e.g., AR 1674, 1980, 582, & 588).
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1 impairment is harmless as a frequent-manipulation limitation was included in the
2 RFC.

3 2. Cardiac Impairments

4 Plaintiff argues the ALJ erred by failing to find that Plaintiff had any
5 cardiac impairment beyond pulmonary embolism, as the record indicated low blood
6 pressure, persistent bradycardia arrhythmia, a thickened right ventricle,
7 pericardial effusion, lightheadedness, and dizziness. Plaintiff accurately highlights
8 the ALJ did not mention cardiac impairments (other than pulmonary embolism) in
9 his step-two analysis. However, the ALJ discussed medical evidence related to
10 Plaintiff's heart in his RFC analysis, finding that the imaging and testing reflected
11 normal functioning.⁴⁶

12 Based on a review of the discussed medical evidence and the record as a
13 whole, Plaintiff fails to establish the ALJ erred by not identifying another cardiac
14 impairment—beyond pulmonary embolism—as a severe impairment. In March
15 2017, Dr. Korimerla noted:

16 36 yr old female with multiple falls- by history they do[] not appear to
17 be real syncopal events. However extensive work up so far does not
18 reveal any cardiac pathology. She may be having a component of
19 POTS [(postural tachycardia syndrome)] and some of her symptoms
20 could be related to anxiety/depression.⁴⁷

21 ⁴⁶ AR 22.

22 ⁴⁷ AR 1569.

1 Dr. Korimerla continued to treat Plaintiff. In March and July 2018, even though
2 Dr. Korimerla heard a positive systolic murmur, he still was unsure whether the
3 pathology was cardiac and awaited the results from the cardiopulmonary tests
4 performed by Dr. Cayetano.⁴⁸ Dr. Cayetano's March 2018 examination revealed
5 that Plaintiff's oxygen saturation was 99% on ambient air and that she had
6 kyphoscoliosis.⁴⁹ After reviewing testing results, including a ventilation-perfusion
7 (VQ) scan, a chest CT, and an Echo, Dr. Cayetano diagnosed Plaintiff with
8 recurrent pulmonary embolism, dyspnea, mild persistent asthma, chronic
9 nonseasonal allergic rhinitis, and inflammatory rhinitis—these diagnoses were
10 made notwithstanding that Dr. Cayetano was aware that the Echo revealed a
11 moderately enlarged right ventricle and Plaintiff reported dizziness,
12 lightheadedness, and shortness of breath.⁵⁰ Dr. Cayetano recommended a dynamic
13 test to determine if there was any pulmonary vascular issues and additional cardio
14 pulmonary testing at the University of Washington (UW).⁵¹ There are no UW
15 medical records related to this recommended cardiopulmonary testing in this
16 record.⁵² Moreover, Plaintiff's cardiac monitoring device, which was implanted for
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18 ⁴⁸ AR 1967-72, 2006-10, & 2067-72.

19 ⁴⁹ AR 1964-65.

20 ⁵⁰ AR 1271, 1899-1900, 1955-56, & 1958.

21 ⁵¹ AR 1271.

22 ⁵² AR 35.

1 almost a year, did not detect any significant arrhythmias.⁵³ Plaintiff argues that
2 the cardiac monitoring device reflected that she engaged in less than 6 “patient
3 activity hours” per day, is consistent with her testimony that she is unable to
4 engage in full-time work.⁵⁴ However, Plaintiff did not provide any evidence to
5 support her argument in this regard, such as what level of activity constitutes a
6 “patient activity hour,” i.e., did this require activity above a certain heart rate
7 and/or a heart rate above a sedentary heart rate? Accordingly, Plaintiff fails to
8 establish that the ALJ’s sedentary work RFC is inconsistent with the recorded
9 “patient activity hours.” In addition, considering Dr. Korimerla’s and Dr.
10 Cayetano’s findings, Plaintiff fails to establish that the sinus bradycardia and rare
11 isolated premature atrial contractions (PACs) were the result of severe cardiac
12 impairments. On this record, the ALJ’s decision to not find a cardiac impairment
13 (beyond pulmonary embolism) as a severe impairment is rational and supported by
14 substantial evidence. Resultantly, the ALJ did not error by not considering
15 whether Plaintiff met Listing 4.05, which requires recurrent arrhythmias
16 documented by electrocardiography occurring coincident with syncope or near-
17 syncope.

21 ⁵³ AR 1740-48.

22 ⁵⁴ AR 1742 & 1747.

1 3. Cervicogenic Headaches

2 Plaintiff argues the ALJ failed to find Plaintiff's cervicogenic headaches as a
3 severe impairment and resultantly failed to find that Plaintiff's headaches were
4 work preclusive, either when considered under Listing 11.02B or as part of the
5 RFC. The ALJ found that Plaintiff's lumbar and cervical degenerative disc diseases
6 were severe impairments and noted that Plaintiff alleged to have migraines 4-5
7 times per month.⁵⁵ But the ALJ did not find that Plaintiff had a severe impairment
8 related to headaches, or namely cervicogenic headaches. Plaintiff did not cite any
9 record wherein Plaintiff was diagnosed with a cervicogenic headache. Further, as is
10 explained below, the ALJ's decision to discount Plaintiff's symptom reports was
11 supported by substantial evidence. To the extent Plaintiff argues the ALJ erred by
12 failing to consider cervicogenic headaches as a severe impairment, Plaintiff fails to
13 establish error in this regard.

14 4. Harmless Error

15 Any step two error was harmless. The ALJ resolved step two in Plaintiff's
16 favor by finding several severe impairments, including lumbar and cervical
17 degenerative disk disease, and crafted an RFC that limited Plaintiff to sedentary
18 work that allowed Plaintiff to rotate positions along with frequent bilateral
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23 ⁵⁵ AR 19-21.

1 handling and fingering, environmental restrictions, brief, superficial interaction
2 with the public, and occasional interaction with coworkers and supervisors.⁵⁶

3 **B. Step Three: Plaintiff fails to establish error.**

4 Plaintiff argues the ALJ erred by not considering her cervicogenic headaches
5 when assessing whether Plaintiff satisfied Listing 11.02.⁵⁷

6 While Listing 11.02 addresses seizures, it is the most closely analogous
7 listing for migraines.⁵⁸ Listing 11.02 requires that a migraine headache be
8 “documented by detailed description of a typical [migraine headache], including all
9 associated phenomena.”⁵⁹ To be of equal severity and duration, Listing 11.02B
10 requires the migraines occur at least once a week for at least three consecutive
11 months, despite compliance with treatment. Listing 11.02D requires the migraines
12 occur at least once every two weeks for at least three consecutive months, despite
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15 ⁵⁶ AR 19-20; *see Stout*, 454 F.3d at 1055.

16 ⁵⁷ Plaintiff also argues that the ALJ erred by not considering whether Plaintiff met
17 Listing 4.05, which requires recurrent arrhythmias documented by
18 electrocardiography occurring coincident with syncope or near-syncope. As
19 discussed above, there was no error in this regard as Plaintiff failed to establish
20 that the medical record supports a Listing 4.05 finding.

21 ⁵⁸ HALLEX DI 24505.015(B)(7)(B) (example 2).

22 ⁵⁹ 20 C.F.R. Pt. 404, Subpt. P, App. 1, Listing 11.02.
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1 adherence to prescribed treatment, and the claimant must have a marked
2 limitation in physical functioning or one of the four areas of mental functioning.

3 Here, the ALJ did not discuss Listing 11.02 nor Plaintiff's headaches in the
4 step-three analysis. Yet, an ALJ is not required to discuss every listing and explain
5 "why a claimant fails to satisfy every different section of the listing," so long as the
6 ALJ's "'evaluation of the evidence' is an adequate statement of the 'foundations on
7 which the ultimate factual conclusions are based.'"⁶⁰ Here, Plaintiff reported
8 recurring, disabling headaches. The ALJ though found Plaintiff's statements
9 concerning the intensity, persistence, and limiting effects of her symptoms were
10 not entirely consistent with the medical evidence and other evidence of record. As
11 is discussed below, the ALJ's discounting of Plaintiff's symptom reports is
12 supported by substantial evidence. While the ALJ did not give reasons for
13 discounting the intensity, persistence, and limiting effects of Plaintiff's headaches
14 specifically, the ALJ discussed Plaintiff's physical conditions, which reportedly
15 contributed to Plaintiff's headaches, and found that the objective medical evidence
16 did not fully support Plaintiff's symptom reports related to her lumbar and cervical
17 degenerative disk disease. And as the ALJ noted, the treatment notes indicated
18 that Plaintiff was neurologically intact. The medical evidence also indicates that
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22 ⁶⁰ *Gonzalez v. Sullivan*, 914 F.2d 1197, 1201 (9th Cir. 1990).
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1 Plaintiff's headaches were not as frequent, severe, or long-lasting as she reported.⁶¹
2 Moreover, the ALJ discounted Plaintiff's credibility because she continued to
3 present to the emergency room for non-urgent conditions and her symptoms were
4 inconsistent with a treating provider's assessment that she was able to carry out
5 work of a light or sedentary nature. The ALJ also found that Plaintiff was only
6 mildly or moderately limited in her four areas of mental functioning. On this
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9 ⁶¹ AR 1997 (noting that Plaintiff reported that she had not had a migraine for six
10 months). Although the ALJ did not expressly discuss that the reported cause of
11 Plaintiff's headaches varied, the ALJ did discount Plaintiff's credibility in general.
12 *See Smolen*, 80 F.3d at 1284 (The ALJ may consider "ordinary techniques of
13 credibility evaluation," such as reputation for lying, prior inconsistent statements
14 concerning symptoms, and other testimony that "appears less than candid."). As to
15 her headaches, in January 2016, she reported that she had a "migraine attack as
16 she had not eaten the entire day," and in March 2016, following a fall, she was
17 treated for chronic neck pain and a reported daily headache related to that neck
18 pain. AR 412 & 570-72. Although it was noted that Plaintiff appeared
19 uncomfortable when being treated for neck pain in March 2016, a notation that
20 Plaintiff appeared uncomfortable or in pain due to a migraine was rare in this
21 record—a record that spans five years and averages more than three medical visits
22 per month.
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1 record, the ALJ's decision not to discuss whether Listing 11.02 was satisfied is a
 2 rational decision supported by substantial evidence.

3 **C. Medical Opinion: Plaintiff fails to establish error.**

4 Plaintiff challenges the ALJ's failure to discuss the letter written by her
 5 treating provider Maria Ello, M.D., which stated:⁶²

6 To whom it may concern,

7 Yadira G. is needing 24 hour care due to medical diagnosis. For any questions
 8 or concerns please feel free to contact our office.

9 The Court finds no error in the ALJ's decision not to discuss Dr. Ello's letter.⁶³

10 This letter is not sufficiently detailed nor supported by treatment notes to be
 11 considered a medical opinion as to Plaintiff's physical or mental restrictions.

12 "Medical opinions are statements from acceptable medical sources that
 13 reflect judgments about the nature and severity of [the claimant's] impairments,
 14 including [the claimant's] symptoms, diagnosis and prognosis, what [the claimant]
 15 can still do despite impairment(s), and [the claimant's] physical or mental
 16 restrictions."⁶⁴ An ALJ is not required to provide reasons for rejecting statements

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 18 ⁶² AR 1206. (Edited to omit Plaintiff's full name).

19 ⁶³ Compare *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) ("Where an ALJ
 20 does not explicitly reject a medical opinion or set forth specific, legitimate reasons
 21 for crediting one medical opinion over another, he errs.").

22 ⁶⁴ 20 C.F.R. § 416.927(a)(1).
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1 within medical records when those records do not reflect physical or mental
2 limitations or otherwise provide information about the ability to work.⁶⁵ Here, Dr.
3 Ello's letter neither identified nor explained Plaintiff's symptoms, diagnosis,
4 prognosis, or her physical or mental restrictions. Simply because one needs 24-hour
5 care does not correlate to a work preclusion, as there are several ways to provide
6 24-hour care while one works. For example, a diabetes insulin pump or pacemaker,
7 or the LINQ device that Plaintiff had installed for almost a year, may constitute
8 24-hour care but they generally still allow for an individual to work. Moreover, Dr.
9 Ello's treatment records do not convert this generic broad letter into a medical

11 ⁶⁵ See *Allen v. Comm'r of Soc. Sec.*, 561 F.3d 646, 651 n.3 (6th Cir. 2009) (noting
12 that the physician's questionnaire responses only addressed the general
13 relationship between the claimant's condition and potential symptoms and did not
14 address the specific extent of claimant's functional limitations); see also *Turner v.*
15 *Comm'r of Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (deciding that because the
16 physician's report did not assign any specific limitations or opinions regarding the
17 claimant's ability to work, "the ALJ did not need to provide 'clear and convincing
18 reasons' for rejecting [the] report because the ALJ did not reject any of [the
19 report's] conclusions"); *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 601
20 (9th Cir. 1999) (An ALJ may reject an opinion that does "not show how [a
21 claimant's] symptoms translate into specific functional deficits which preclude
22 work activity.").

1 opinion. The imaging reviewed by Dr. Ello indicated either normal results or mild
2 conditions and Dr. Ello routinely observed Plaintiff in generally good health.⁶⁶
3 There is nothing in Dr. Ello's treatment records that reflect Plaintiff's diagnosed
4 impairments were so severe that Plaintiff was unable to perform full-time work.
5 There was no error by the ALJ in not discussing Dr. Ello's letter.

6 Moreover, even if Dr. Ello's letter is construed as a medical opinion that
7 Plaintiff was unable to sustain full-time work, there is no harm resulting from the
8 ALJ's failure to discuss this "opinion," which conflicts with the opinions of the non-
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13 ⁶⁶ See, e.g., AR 1382-83 (not in distress, very slight rhonchi and wheeze so advised
14 shortness of breath is asthma, and no edema); AR 1390-91 (not in distress, some
15 occasional wheeze noted, no murmurs appreciated, no edema but with upper back
16 pain); AR 1396-97 (not in distress, chest was clear to auscultations, no murmurs
17 appreciated, right left lower quadrant abdominal pain, no edema noted, but a
18 positive straight leg raise); AR 1410-11 (not in distress but with an intact slight
19 bump on her forehead and related neck pain and migraines due to a recent fall,
20 chest was clear to auscultations and no murmurs appreciated); & AR 1430-32 (not
21 in distress, chest was clear to auscultations, no murmurs appreciated, grossly
22 normal epigastric pain, and no edema).
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1 examining medical sources, as it is vague, unexplained, and unsupported by Dr.
2 Ello's largely unremarkable medical records.⁶⁷

3 **D. Plaintiff's Symptom Reports: Plaintiff fails to establish**
4 **consequential error.**

5 Plaintiff argues the ALJ failed to provide valid reasons for rejecting her
6 symptom reports. When examining a claimant's symptom reports, the ALJ must
7 make a two-step inquiry. "First, the ALJ must determine whether there is objective
8 medical evidence of an underlying impairment which could reasonably be expected
9 to produce the pain or other symptoms alleged."⁶⁸ Second, "[i]f the claimant meets
10 the first test and there is no evidence of malingering, the ALJ can only reject the
11 claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific,
12 clear and convincing reasons' for the rejection."⁶⁹ "This requires the ALJ to
13 'specifically identify the testimony [from a claimant] she or he finds not to be
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15 ⁶⁷ *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009)
16 (recognizing that a medical opinion may be rejected if it is conclusory or
17 inadequately supported); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190,
18 1195 (9th Cir. 2004) (discussing that treatment notes are to be considered along
19 with opinion).

20 ⁶⁸ *Molina*, 674 F.3d at 1112.

21 ⁶⁹ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
22 F.3d at 1036).

1 credible and . . . explain what evidence undermines that testimony” and not merely
2 rely on “high-level reasons” unsupported by a discussion of the evidence in conflict
3 with the claimant’s reported symptoms.⁷⁰

4 Here, the ALJ found Plaintiff’s statements concerning the intensity,
5 persistence, and limiting effects of her symptoms inconsistent with the largely
6 unremarkable objective medical evidence, improvement with treatment, the
7 medical recommendation that Plaintiff stop using the emergency department for
8 non-emergency medical care, minimal mental health treatment, and Plaintiff’s
9 activities.⁷¹

10 First, as to the ALJ’s finding that Plaintiff’s symptom reports were
11 inconsistent with the objective medical evidence, symptom reports cannot be solely
12 discounted on the grounds that they were not fully corroborated by the objective
13 medical evidence.⁷² However, objective medical evidence is a relevant factor in
14 considering the severity of the reported symptoms.⁷³ “Objective medical evidence”
15 means signs, laboratory findings, or both.⁷⁴ In turn, “signs” is defined as:

17 ⁷⁰ *Lambert v. Saul*, No. 19-17102, 2020 WL 6735633 (9th Cir. Nov. 17, 2020) (citing
18 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1102) (9th Cir. 2014).

19 ⁷¹ AR 21-23.

20 ⁷² *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

21 ⁷³ *Id.*

22 ⁷⁴ 20 C.F.R. § 416.902(k).

1 one or more anatomical, physiological, or psychological abnormalities
2 that can be observed, apart from [the claimant's] statements
3 (symptoms). Signs must be shown by medically clinical diagnostic
4 techniques. Psychiatric signs are medically demonstrable phenomena
5 that indicate specific psychological abnormalities, e.g., abnormalities
6 of behavior, mood, thought, memory, orientation, development, or
7 perception, and must also be shown by observable facts that can be
8 medically described and evaluated.⁷⁵

9 Evidence obtained from the “application of a medically acceptable clinical
10 diagnostic technique, such as evidence of reduced joint motion, muscle spasm,
11 sensory deficits, or motor disruption” is considered objective medical evidence.⁷⁶

12 Here, the ALJ’s finding that the objective medical evidence was inconsistent with
13 Plaintiff’s reports of disabling physical and mental impairments is supported by
14 substantial evidence. As the ALJ noted, the imaging, including cervical MRI and a
15 lumbar MRI, were largely unremarkable.⁷⁷ Moreover, the physical examinations

16 ⁷⁵ *Id.* § 416.902(l).

17 ⁷⁶ 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective medical evidence
18 (2019).

19 ⁷⁷ AR 21 (citing AR 414-15 (No spinal canal stenosis, evidence of nerve root
20 compromise, or cervical spinal cord signal abnormality; multilevel degenerative
21 disc disease, face arthropathy; normal unenhanced brain MRI; mild acute
22 pulmonary embolism in the left lower lobe; small left lower lobe lung nodule
23 measuring 4 mm; negative right leg for deep venous thrombosis; no evidence of left
upper extremity deep vein thrombosis; essentially normal [Echo cardiac] study and

1 were routinely unremarkable except for some tenderness, discomfort, and sporadic
2 murmurs.⁷⁸ The ALJ also highlighted that Plaintiff's treating provider determined
3 that Plaintiff was "ambulatory and able to carry out work of a light or sedentary
4 nature, e.g., light house work, office work."⁷⁹ Plaintiff argues that it is unclear
5

6 pulmonary artery systolic pressure could not be assessed due to absence of
7 adequate TR jet); & AR 1872 ("Small posterior annular fissure demonstrated at L5-
8 S1. There is mild diffuse disc bulge at this level, without significant spinal canal or
9 neural foraminal stenosis"; mild diffuse disc bulge at L4-L5; and probable left
10 adnexal cyst).

11 ⁷⁸ AR 21-22 (citing, e.g., AR 1674 (Plaintiff may have some tenderness or swelling
12 in her joints or back, she retained a normal gait, full strength throughout her
13 bilateral upper and lower extremities, negative straight leg raises, negative
14 Spurling, negative Hoffmann, and negative Durkan), AR 1980 (normal gait and
15 musculoskeletal movement full and free from obvious pain, although bruising in
16 right calf with tenderness), AR 582-83 (no abnormal observations for heart, lungs,
17 abdomen, musculoskeletal, although scoliosis in back and some edema noted in
18 extremities, AR 587-88 (no abnormal observations or findings other than congested
19 turbinates), AR 1269 (no abnormal objective findings other than kyphoscoliosis and
20 a moderately loud systolic murmur along the right parasternal border); & AR 1364
21 (no abnormal observations)).

22 ⁷⁹ AR 1378.
23

1 whether this note reflected the provider’s opinion or whether it was simply a
2 generic rating system. This was the only medical record that was authorized by Dr.
3 Fora or one that included a “performance status” entry. Regardless of whether this
4 was default language for a selected performance status, this is the language
5 contained in Dr. Fora’s treatment note and this performance status is consistent
6 with the largely unremarkable observations and findings. Accordingly, the ALJ’s
7 finding that Plaintiff’s reported disabling physical symptoms were inconsistent
8 with the objective medical evidence is supported by substantial evidence. Moreover,
9 as is discussed below, the ALJ’s finding that Plaintiff’s reported mental health
10 symptoms were inconsistent with the objective medical evidence is supported by
11 substantial evidence.

12 Second, the ALJ’s finding that Plaintiff’s reported bladder symptoms were
13 inconsistent with her improvement with treatment is rational and supported by
14 substantial evidence.⁸⁰ The treatment notes reflect that Plaintiff’s urinary
15 incontinence improved after Botox injections in January and November 2016.⁸¹
16 Plaintiff argues that her bladder symptoms continued, but she presented no
17 evidence that she sought subsequent Botox injections or other treatment for her
18 urinary-urgency symptoms.⁸² Plaintiff submits that she continued to have bacteria

20 ⁸⁰ See *Morgan*, 169 F.3d at 599-600 (considering evidence of improvement).

21 ⁸¹ AR 406 & 1520.

22 ⁸² See, e.g., AR 1520.

1 and blood in her urine samples. Yet the medical evidence does not clearly indicate
2 that the bacteria in her urine was related to her overactive bladder or interstitial
3 cystitis. And the amount of blood present in the urine samples was “small.”⁸³ There
4 is no medical opinion indicating that there was a need to accommodate these
5 impairments with non-permitted work breaks. Plaintiff also argues that it was
6 internally inconsistent for the ALJ to find the bladder disorders as severe but then
7 not include any limitations in the RFC for the bladder disorders. This argument
8 fails to reflect that the vocational expert testified that the three identified jobs
9 allowed ready access to a bathroom during permitted breaks and that a worker is
10 generally permitted to be unproductive up to 20 percent of the workweek (thereby
11 allowing Plaintiff to use the bathroom outside of “normal” work breaks).⁸⁴ The
12 ALJ’s finding that Plaintiff had severe bladder conditions that improved with
13 treatment and thus allowed her to work the three identified jobs is a clear and
14 convincing reason, supported by substantial evidence, to discount Plaintiff’s more
15 limiting bladder symptoms.

16 Third, the ALJ found Plaintiff’s reported severe physical symptoms
17 inconsistent with the counseling she received from a provider as to the proper use
18 of emergency care.⁸⁵ The cited medical record states in part:

20 ⁸³ AR 1640, 1822, 1837, & 1844.

21 ⁸⁴ AR 67.

22 ⁸⁵ AR 22.

- 1 • “I received notification patient has been to the hospital 11 times this
- 2 year”;
- 3 • All of the hospital records we were able to find were printed and
- 4 reviewed with the patient in detail during today’s visit”; and
- 5 • “30 minutes of face to face counseling provided on when to go to the
- 6 [emergency department] or use [urgent care], signs and symptoms of
- 7 clotting and likelihood of having a clot while on Xarelto, reassurance
- 8 provided all records from various [emergency department’s] were
- 9 reviewed and were normal other than the UTI which is currently
- 10 being treated, patient expressed understanding.”⁸⁶

11 Given the fairly unremarkable objective findings in the record and this detailed
12 notation about Plaintiff’s unnecessary use of the emergency department on several
13 occasions, the ALJ reasonably found Plaintiff’s reported disabling physical
14 symptoms not credible.⁸⁷ This was a clear and convincing reason to discount
15 Plaintiff’s reported physical symptoms.

16
17 ⁸⁶ AR 1353-54.

18 ⁸⁷ See *Tonapetyan v. Halter*, 242 F.3d 1144, 1148 (9th Cir. 2001) (finding that the
19 tendency to exaggerate symptoms is a permissible reason to discount a claimant’s
20 reported symptoms); *Molina*, 674 F.3d at 1111 (recognizing that the ALJ is
21 permitted to weigh conflicting evidence and the court upholds the ALJs’ findings
22 that are supported by inferences reasonably drawn from the record).

1 Fourth, the ALJ's finding that Plaintiff's reported mental health symptoms
2 were inconsistent with her minimal mental-health treatment and her generally
3 "normal" mental status examinations is rational and supported by substantial
4 evidence. Unexplained or inadequately explained reasons for failing to seek
5 medical treatment may cast doubt on a claimant's subjective complaints.⁸⁸ Here,
6 although it was recommended that Plaintiff engage in counseling, she did not show
7 up for three counseling sessions but she did attend 1) a medication management
8 appointment at which she had restricted affect and mood with fair insight and
9 judgment and 2) a counseling session at which her affect and mood were broad and
10 her thought process clear, logical, and organized.⁸⁹ Plaintiff argues that her lack of
11 participation in counseling was not a valid reason to discount her reported mental
12 health symptoms as her lack of mental health treatment was in part due to her
13 mental health conditions. But Plaintiff presented no evidence to support this
14 argument, i.e., there was no evidence that her anxiety or depression was so severe
15 as to prevent her from remembering and attending medical appointments. In fact,
16 the medical records reveal that Plaintiff was able to attend physical medical
17 appointments on a regular basis. That Plaintiff's mental status was generally
18 noted as normal during the five years covered by the medical records and that she
19 received minimal mental health treatment were clear and convincing reasons

21 ⁸⁸ *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989).

22 ⁸⁹ AR 1316-24.

1 supported by substantial evidence to discount her more limiting mental health
2 symptoms.⁹⁰

3 Fifth, the ALJ discounted Plaintiff's complaints of disabling symptoms
4 because they were inconsistent with Plaintiff's activities.⁹¹ If a claimant can spend
5 a substantial part of the day engaged in pursuits involving the performance of
6 exertional or non-exertional functions, the ALJ may find these activities
7 inconsistent with the reported disabling symptoms.⁹² The ALJ highlighted that
8 Plaintiff ran a non-profit organization for which she did crafts and organized
9 events, she traveled to California and Seattle for events and vacations, and she was
10 a stay-at-home mother of three special needs children, an activity that required
11 "many of the same skills as full-time work, such as concentration, stamina, time
12 management, social skills, and mental acuity."⁹³ As Plaintiff highlights, she had
13 significant help with child care and related housework: caregivers helped about 143
14 hours a month.⁹⁴ Nonetheless, as is reflected in the investigation report cited by
15 the ALJ, Plaintiff remained active during the time the caregivers were at her
16

17
18 ⁹⁰ AR 22 (citing, e.g., AR 392, 396, 401, 430, 455, 495, 549, 582, 739, & 753).

19 ⁹¹ AR 22.

20 ⁹² *Molina*, 674 F.3d at 1113.

21 ⁹³ AR 23.

22 ⁹⁴ AR 720 & 1050.
23

1 house.⁹⁵ Moreover, even if the ALJ erred by finding Plaintiff's activities
 2 inconsistent with her disabling symptom reports, the ALJ articulated other
 3 supported grounds for discounting Plaintiff's reported physical and mental
 4 symptoms.⁹⁶ Accordingly, any error in this regard is harmless.

5 In summary, Plaintiff fails to establish the ALJ erred by discounting her
 6 symptom reports.

7 **E. RFC: Plaintiff fails to establish error.**

8 Plaintiff argues the ALJ failed to properly assess the limitations from her
 9 overactive bladder, interstitial cystitis, headaches, cardiac impairment(s), and
 10 seronegative RA into the RFC. "[T]he ALJ is responsible for translating and
 11 incorporating clinical findings into a succinct RFC."⁹⁷

12 1. Overactive Bladder and Interstitial Cystitis

13 Plaintiff argues the ALJ failed to consider that as a result of her severe
 14 overactive bladder and chronic interstitial cystitis (IC) that she must use the
 15 restroom every 30-60 minutes for 10-15 minutes at a time. The ALJ found
 16 Plaintiff's IC to be a severe impairment but did not include an express bathroom
 17 limitation in the RFC. The vocational expert testified that each of the identified
 18

19 ⁹⁵ AR 716-30 (noting that two witnesses describe Plaintiff as always busy sewing
 20 and crocheting items to sell).

21 ⁹⁶ See *Carmickle*, 533 F.3d at 1162-63 n.4.

22 ⁹⁷ *Rounds v. Comm'r of Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015).

1 jobs (addresser, document preparer, and final assembler) would be in close
2 proximity to a restroom, and that an employee would typically be retained so long
3 as she was on task 80 percent of the day.⁹⁸ As is discussed above, the ALJ
4 discounted Plaintiff's reported bladder symptoms because her bladder symptoms
5 improved with treatment.⁹⁹ Moreover, the ALJ generally found Plaintiff's symptom
6 reports not credible because of her unnecessary use of emergency care, a treating
7 provider found that Plaintiff could perform work of a sedentary or light nature, and
8 Plaintiff's reported symptoms were not fully supported by the objective medical
9 evidence. The ALJ's findings are rational and supported by substantial evidence.
10 Plaintiff fails to establish the ALJ erred by not including additional bathroom
11 breaks in the RFC.

12 2. Other Impairments

13 As discussed above, the ALJ reasonably included a frequent manipulation
14 limitation, which sufficiently accounts for Plaintiff's diagnosed seronegative RA.
15 The ALJ also reasonably determined that Plaintiff did not have a severe cardiac
16 impairment beyond pulmonary embolism. Plaintiff fails to establish that other
17 RFC limitations were needed in order to sufficiently address her medically
18 supported impairments and resulting functional limitations. On this record, there
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21 ⁹⁸ AR 67-68.

22 ⁹⁹ AR 406 & 1520.
23

1 was no duty for the ALJ to further develop the record by obtaining a consultative
2 examination.

3 **F. Step Five: Plaintiff fails to establish error.**

4 Plaintiff argues the ALJ's step-five finding is erroneous because it was
5 based on unreliable and invalid information from the vocational expert (VE) about
6 the number of available jobs. At the hearing, the VE identified three jobs consistent
7 with the ALJ's RFC and stated that his job-numbers estimates came from the Job
8 Browser Pro (JBP).¹⁰⁰ Plaintiff argues that the JBP's 2020 numbers for these jobs
9 do not match the VE's 2019 testimony and that the JBP's numbers indicate less
10 than a substantial number of addresser, document preparer, and final assembler
11 jobs in the national economy:

	VE	JBP 2020
Addresser, DOT 209.587-010	25,000 jobs	2,699 jobs
Document preparer, DOT 249.587-018	64,000 jobs	19,073 jobs
Final assembler, DOT 713.687-018	24,000 jobs	27 jobs

15 At step five, the ALJ must identify specific jobs existing in substantial
16 numbers in the national economy that the claimant can perform despite her
17 identified limitations.¹⁰¹ An ALJ may solicit VE testimony as to the availability of
18

19
20 ¹⁰⁰ AR 63-67.

21 ¹⁰¹ *Johnson v. Shalala*, 50 F.3d 1428, 1432 (9th Cir. 1995). *See* 20 C.F.R.

22 § 416.920(g).
23

1 jobs in the national economy.¹⁰² The ALJ's decision regarding the number of jobs
2 must be supported by substantial evidence.¹⁰³ A VE's reliable testimony constitutes
3 substantial evidence.¹⁰⁴

4 First, the Commissioner argues that Plaintiff waived any challenge to the
5 VE's testimony as to the number of available addresser, document preparer, and
6 final assembler jobs because Plaintiff's counsel did not challenge the methodology
7 used by the VE or the identified job numbers during the administrative hearing. At
8 the hearing, Plaintiff's counsel asked the VE what the source of his job numbers
9 were, and the VE identified the JBP.¹⁰⁵ Plaintiff's counsel did not pursue any
10 additional questioning as to the VE's identified job numbers nor presented any JBP
11 evidence or other job-source evidence. Following the administrative hearing,
12 Plaintiff did not apparently request permission to submit supplemental briefing or
13 interrogatories contrasting the VE's job estimates with the JBP information or
14 present such as new evidence to the Appeals Council. As a result, Plaintiff cannot
15

16 ¹⁰² *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 2011); *Bayliss v. Barnhart*, 427
17 F.3d 1211, 1218 (9th Cir. 2005).

18 ¹⁰³ *Farias v. Colvin*, 519 Fed. App'x 439, 440 (9th Cir. 2013) (unpublished). *See Hill*,
19 698 F.3d at 1158.

20 ¹⁰⁴ *Bayliss*, 427 F.3d at 1218; *Thomas v. Barnhart*, 278 F.3d 947, 960 (9th Cir.
21 2002).

22 ¹⁰⁵ AR 67.
23

1 pursue this jobs-number challenge. As the Ninth Circuit emphasized in *Shaibi v.*
2 *Berryhill*, the ALJ (or the Appeals Council) is “better positioned to weigh
3 conflicting evidence than a reviewing court.”¹⁰⁶ The ALJ’s better positioning is
4 highlighted here as Plaintiff now on appeal presents the Court with 2020 JBP
5 information. However, the VE presumably did not rely on 2020 JBP information
6 when he testified in January 2019.

7 Even if Plaintiff’s 2020 JBP information is considered by the Court, there
8 are 2,699 addresser jobs and 19,073 document preparer jobs identified nationwide.
9 The Ninth Circuit has not established a “bright-line rule for what constitutes a
10 ‘significant number’ of jobs.”¹⁰⁷ Yet, the Ninth Circuit has held that the availability
11 of 25,000 national jobs constitutes a significant number of jobs, albeit it was a
12 “close call.”¹⁰⁸ In comparison, the Ninth Circuit held that the availability of 1,680
13 national jobs did not constitute a significant number of jobs.¹⁰⁹ Here, using the
14 2020 JBP data, the combined national total of addresser and document preparer
15

16 ¹⁰⁶ 883 F.3d 1102, 1109 (9th Cir. 2017) (“When a claimant fails entirely to challenge
17 a vocational expert’s job numbers during administrative proceedings before the
18 agency, the claimant forfeits such a challenge on appeal, at least when that
19 claimant is represented by counsel.”).

20 ¹⁰⁷ *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

21 ¹⁰⁸ *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 528-29 (9th Cir. 2014).

22 ¹⁰⁹ *Beltran*, 700 F.3d at 390.

1 jobs is 21,772.¹¹⁰ The Court finds this number sufficiently close to the 25,000
 2 national jobs considered as a significant number of jobs by the Ninth Circuit in
 3 *Gutierrez v. Commissioner of Social Security*.¹¹¹ Accordingly, even if Plaintiff's
 4 waived challenge is considered, it is unavailing.

5 V. Conclusion

6 Accordingly, **IT IS HEREBY ORDERED:**

- 7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **DENIED**.
- 8 2. The Commissioner's Motion for Summary Judgment, **ECF No. 15**, is
 9 **GRANTED**.
- 10 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.
- 11 4. The case shall be **CLOSED**.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and
 13 provide copies to all counsel.

14 **DATED** this 16th day of December 2020.

15 

16 **EDWARD F. SHEA**
 17 Senior United States District Judge

18
 19 ¹¹⁰ The Court elects not to consider the 27 final assembler jobs in this assessment.

20 ¹¹¹ 740 F.3d 519, 528 (9th Cir. 2014) (citing *Johnson v. Chater*, 108 F.3d 178, 180
 21 (8th Cir. 1997) (determining 10,000 jobs to constitute work that exists in
 22 significant numbers)).
 23